

ARTICLE VII.

HISTORIC PRESERVATION

DIVISION 1.

GENERALLY

Sec. 33-201. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any change to the exterior of a building, structure, object or site. Alteration shall include, but is not limited to, changing to a different kind, type or size of roofing or siding materials; changing, eliminating, or adding exterior doors, door frames, windows, window frames, shutters, fences, railings, columns, beams, walls, porches, steps, porte-cocheres, balconies, or ornamentation; or the dismantling, moving or removing of any exterior feature. Alteration does not include ordinary maintenance and repair.

Archaeological means relating to the study of past human behavior through use of material remains of historic and prehistoric origin.

Archaeological site means property or a location designated by the city council on which there exists material remains of past life or past life activities that occurred on the property or at the location.

Block means one or more lots, tracts, or parcels of land bounded by streets, easements, rights-of-way, or other physical features or a combination thereof.

Blockface means the portion of a block that abuts a street.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building permit means an official document or certificate issued by the building official authorizing performance of a specified activity, including the alteration, restoration, rehabilitation, construction, relocation or demolition of a building, structure or object.

Certificate of appropriateness means a current and valid permit issued by the HAHC or the planning official, as applicable, authorizing the issuance of a

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building permit for construction, alteration, rehabilitation, restoration, relocation or demolition required by this article.

Conservation plan means an inventory and analysis of historic resources within a geographic area of the city designated or proposed for designation as an historic district pursuant to the provisions of this article that contains standards for alteration, rehabilitation, restoration, construction, relocation and demolition of buildings, structures, objects or sites in an historic district.

Construction means the act of expanding an existing building, structure or object or the erection of a new building, structure or object on a lot, site or other property.

Contributing means a building, structure, object or site that reinforces the cultural, architectural or historical significance of the historic district in which it is located.

Contributing structure means a building, structure, object or site that is identified as contributing upon the designation of the historic district in which it is located.

Demolition means an act or process that destroys in whole or in part any building, structure, object or site.

Designation means the formal recognition by the city council of a building, structure, object, site or district as historically, architecturally, culturally or archaeologically significant to the city, state, nation or region.

~~*Design guidelines* means the design guidelines for the Old Sixth Ward protected historic district approved by the city council, and as subsequently amended by the HAHC, pursuant to division 6 of this article.¹~~

Excavation means to expose, uncover, or remove by digging, cutting or hollowing out.

Exterior feature means an element of the architectural character and general arrangement of the external portion of a building, structure or object,

¹ All references to the Old Sixth Ward Protected Historic District will be removed from this Article VII of Chapter 33, but the area will continue to be protected under the provisions of these amendments. To ensure this, the ordinance adopting these changes will ratify and confirm the boundaries of the area currently known as the Old Sixth Ward Protected Historic District as an historic district, all of which will have the same protections Old Sixth Ward Protected Historic District currently enjoys, thus rendering the separate treatment of the Old Sixth Ward Protected Historic District redundant.

including building material, that is visible from a public right-of-way.

HAHC means the Houston archaeological and historical commission.

Historic district means a geographical area designated by the city council that possesses a significant concentration, linkage or continuity of buildings, structures, objects or sites united by historical, cultural, architectural or archaeological significance to the city, state, nation or region.

Landmark means any individual building, structure, object or site designated by the city council for its historical, cultural, architectural or archaeological significance in the city, state, nation or region.

Mandatory repair means a repair of a building or structure that is necessary to comply with article IX of chapter 10 of this Code as evidenced by an order of the hearing official or the building and standards commission or by a citation.

Noncontributing means a building, structure, object or site that does not reinforce the cultural, architectural or historical significance of the historic district in which it is located.

Noncontributing structure means a building, structure, object or site that is identified as noncontributing upon the designation of the historic district in which it is located.

Nonprofit organization means an entity organized for religious or not-for-profit purposes that holds a determination letter from the Internal Revenue Service that it is exempt from taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, by virtue of section 501(c)(3) of that Code.

Object means a material thing of a functional, aesthetic, cultural, historical or scientific value that may be moveable by nature or design, yet related to a specific setting or environment.

~~*Old Sixth Ward protected historic district* or *OSWPHD* means the protected historic district established by the city council pursuant to division 6 of this article.~~

Ordinary maintenance and repair means any work to correct or prevent deterioration, decay or damage to a building, structure, object or site (or any part thereof), provided that the work does not change the design, character, texture or material of any exterior feature or constitute an "alteration" as defined above.

Paleontological means relating to the study of all fossil remains of organisms that existed in the past.

Potentially contributing means a building, structure, object or site with incompatible alterations or deteriorating conditions that, if reversed, would reinforce the cultural, architectural or historical significance of the historic district in which it is located.

Potentially contributing structure means a building, structure, object or site that is identified as potentially contributing upon the designation of the historic district in which it is located.

Protected landmark means a landmark whose owner has elected to permanently protect the landmark by foregoing the 90-day waiver certificate authorized by this article.

Public right-of-way means an area, at grade level, of a minimum 40 feet in width, dedicated to the public for the passage of people or goods.

Qualified curatorial association means an organized and permanent non-profit institution, essentially educational or aesthetic in purpose, with professional staff, that owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule, provided that the institution meets the requirements of the Council of Texas Archaeologists' Guidelines (Curation Standards and Procedures), 1992 edition, as may be amended or updated from time to time.

Real property records means the applicable records of a county in which conveyances of real property are recorded.

Rehabilitation means the act or process of returning a building, structure, object or site to a state of utility that makes possible an efficient contemporary use while preserving those portions or exterior features that are historically, architecturally and culturally significant.

Relocation means any change in the location of a building, structure or object.

Restoration means the act or process of accurately recovering the form and details of a building, structure, object or site and its setting as it appeared at a particular period of time by means of the removal of later work, or by the replacement of missing earlier work or both.

Site means property upon which a significant event occurred, including, but not limited to, any land, building or natural resource where prehistoric or historic occupations or activities occurred and the location of buildings and structures, whether standing, ruined, demolished or relocated, where the location retains historical, architectural or archaeological value and integrity.

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Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Tract means a contiguous parcel of land under common ownership.

Working day means a day other than a Saturday, Sunday or official city holiday.

Sec. 33-202. Scope.

(a) The provisions of this article apply to the alteration, rehabilitation, restoration, construction, relocation and demolition of any building, structure, object or site that is designated as a landmark or protected landmark or that is located within an historic district or an archaeological site and to the excavation of any archaeological site.

(b) Nothing in this article shall be construed to authorize the city to regulate the use of any building, structure or property.

(c) Nothing in this article shall be construed to authorize the city to regulate the interior characteristics of any building or structure, provided that any change in the interior characteristics of a landmark, protected landmark, or contributing structure in an historic district that has the effect of changing any exterior feature shall be subject to the terms of this article. Other provisions of this Code, the Construction Code, the Fire Code or state or federal law or regulation that are applicable to any building, structure, object or site that is subject to the provisions of this article shall continue to apply.

(d) This article does not abrogate or annul any restrictive covenant contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records or deed records. Any property designated as a landmark, protected landmark, or archaeological site or included within an historic district shall remain subject to the provisions of any restrictive covenants applicable to the property, and the restrictive covenants shall remain fully enforceable.

(e) The provisions of this article shall apply to buildings, structures, objects or sites that are owned by the United States of America, the State of Texas or a political subdivision of the State of Texas; provided such entities are not otherwise exempted from this article by law.

(f) Prior to any amendment of this article, the HAHC and the commission each shall conduct one public hearing to solicit public comments on the proposed amendments. The HAHC and the commission may make recommendations to the city council with respect to the proposed amendments. The provisions of this subsection

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shall not apply to any amendment to correct clerical errors or to make nonsubstantive changes in this article.

Sec. 33-203. Enforcement and penalties; remedies cumulative; other action not limited.

(a) The procedures set forth in this article are cumulative of all other remedies available to the city relating to the subject matter hereof. Specifically, the city attorney may institute any legal action necessary to enforce this article or enjoin or otherwise cause the abatement of any violations hereof, including legal action necessary to recover damages or require restoration or reconstruction under section 315.006 of the Texas Local Government Code. The city council finds that alteration, rehabilitation, restoration, construction, relocation or demolition of any building, structure, object or site that is subject to the provisions of this article without a certificate of appropriateness as required under this article adversely affects the structural, physical or visual integrity of the building, structure, object or site.

(b) The building official shall not issue a building permit for any activity that requires a certificate of appropriateness pursuant to this article unless the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to section 33-250 of this Code.

(c) Any person who violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$50.00 nor more than \$500.00 for each violation. Each day during which any violation of this article continues shall constitute a separate offense.

(d) If a landmark or protected landmark or a contributing or potentially contributing structure located in an historic district is demolished without a certificate of appropriateness required by this article or, in the case of a landmark only, a 90-day waiver certificate issued pursuant to section 33-250 of this Code, the building official shall not issue a building permit, and no other person shall issue any other city permit, for the site where the landmark, protected landmark or structure was formerly located for a period of 2 years after the date of the demolition. The director shall cause notice of suspension of permitting pursuant to this subsection to be recorded in the real property records of the county in which the property is located. The owner of the site may appeal the denial of a permit under this subsection to the HAHC, which shall consider the circumstances under which the demolition occurred and whether the applicant has demonstrated an unreasonable economic hardship or unusual or compelling circumstance. The decision of the HAHC on the appeal shall be final.

Sec. 33-204. Article supplemental.

The provisions of this article shall be cumulative of all other ordinances, laws and applicable regulations.

Secs. 33-205--33-210. Reserved.

DIVISION 2.

HOUSTON ARCHAEOLOGICAL AND HISTORICAL COMMISSION

Sec. 33-211. Composition; qualifications of members.

(a) The creation of the Houston archaeological and historical commission is hereby reaffirmed. The HAHC shall consist of 13 members. Each member shall be a person who has knowledge and experience in the archaeological, architectural, cultural, social, economic, ethnic or political history of the city. The mayor shall assign a staff member to serve as a liaison between the HAHC and the mayor's office. The director, or in his absence or inability to act, a deputy director or assistant director of the department shall serve as a non-voting, ex officio member and as executive secretary to the HAHC. The archivist of the Houston public library system and the directors of general services and public works and engineering shall serve as ex officio members of the HAHC, but shall not have a vote. When HAHC business requires the involvement of other departments, representatives of those departments shall attend meetings of the HAHC upon notice by the executive secretary. The HAHC shall elect its own chair and vice-chair.

(b) The 13 members of the HAHC shall hold specific positions as follows:

- (1) Position 1 shall be filled by a professional archaeologist with knowledge of and interest in archaeology of the city.
- (2) Position 2 shall be filled by a professional historian with knowledge of and interest in the history of the city.
- (3) Position 3 shall be filled by an architectural historian.
- (4) Position 4 shall be filled by a representative of a cultural history organization.
- (5) Position 5 shall be filled by a registered architect.
- (6) Position 6 shall be filled by a landscape architect or an urban planner.
- (7) Position 7 shall be filled by a professional real estate appraiser certified to perform appraisals for the city.
- (8) Position 8 shall be filled by a remodeler or builder registered with the Texas Residential Construction Commission with knowledge of and interest in restoration, historic building renovation and compatible new construction.

(9) Positions 9 through 13 shall be filled by citizen representatives.

(c) At least four members of the HAHC shall own or reside in a historic landmark or contributing structure in a designated historic district designated pursuant to this division.

(d) Members holding Positions 1 through 9 of the HAHC shall be appointed by the mayor, subject to confirmation by the city council. Members holding Positions 10 through 13 shall be appointed by the city council. The terms of each even-numbered position shall end on March 1 of even-numbered years, and the terms of each odd-numbered position shall end on March 1 of odd-numbered years.

(e) Each member shall serve for a term of two years and shall hold over until the member's successor is qualified.

Sec. 33-212. Meetings; vacancies; removal.

(a) The HAHC shall adopt a regular meeting schedule and a schedule of submittal deadlines for applications filed pursuant to this article.

(b) A position on the HAHC shall be considered to be vacant if the member appointed to that position is absent from HAHC meetings three times within the period of a year, unless those absences are judged to be excusable by the mayor or a member of the mayor's staff who is designated as liaison to the HAHC.

(c) A vacancy in any position shall be filled in the manner provided for original appointments, and the person so appointed shall serve for the remainder of the unexpired term. A member may be appointed to serve consecutive terms, but not more than three full consecutive terms.

(d) Seven members of the HAHC shall constitute a quorum; however, in the event of vacancies on the commission, a majority of the members of the commission shall constitute a quorum. The executive secretary shall be counted for purposes of determining the presence of a quorum. Other ex officio members of the HAHC shall not be counted for purposes of determining the presence of a quorum.

Sec. 33-213. Service without pay.

Members of the HAHC shall serve without compensation.

Sec. 33-214. Responsibilities.

In addition to other responsibilities specified in this article, the responsibilities of the HAHC shall be as follows:

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- (1) Adopt such rules of procedure for meetings and proceedings of the HAHC as are necessary or convenient to accomplish the purposes set out in this article;
- (2) Actively pursue and encourage the creation and maintenance of a list and maps of buildings, structures, objects, sites and areas in the city having special archaeological, historical, paleontological and historical architectural interest or value. The HAHC shall place particular emphasis upon evaluating and incorporating into the list and maps the findings of studies and surveys already completed;
- (3) Identify buildings, structures, objects, sites and areas of the city that have the potential for designation as landmarks, protected landmarks, historic districts or archaeological sites and, where authorized by this article, initiate the process for the designation of landmarks, historic districts and archaeological sites;
- (4) Increase public awareness of the value of archaeological, historical, paleontological and historical architectural conservation by facilitating and participating in public educational programs and by recommending updates to the conservation program;
- (5) Make recommendations to the city council concerning the availability and utilization of grants from federal and state agencies, private groups and individuals, and the utilization of budgetary appropriations to promote the conservation of significant archaeological, historical, paleontological or historical architectural sites or structures in the city;
- (6) Evaluate and comment upon decisions by city departments and agencies affecting archaeological, historical, paleontological or historical architectural resources;
- (7) Assist the city in working with the Texas Historical Commission, the Texas Antiquities Committee, the Texas State Historic Preservation Officer, the Harris County Historical Commission, and other appropriate federal, state and local agencies;
- (8) Facilitate efforts of persons wishing to donate archaeological, historical, paleontological or historical architectural artifacts, materials, structures, objects or sites to the public in placing those resources with qualified curatorial associations;
- (9) ~~Evaluate the effectiveness of the design guidelines in achieving the goals of the Old Sixth Ward Protected Historic District and recommending changes to the design guidelines, if appropriate;~~

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- | ———(10) Report annually to the city council the results of its work in these areas;
and
- | (142) Perform any other duties that the city council authorizes the HAHC to perform.

Secs. 33-215--33-220. Reserved.

DIVISION 3.

**DESIGNATION OF LANDMARKS, PROTECTED LANDMARKS, HISTORIC
DISTRICTS AND ARCHAEOLOGICAL SITES**

Sec. 33-221. Designation.

(a) The city council may designate buildings, structures, objects and sites as landmarks and protected landmarks, may designate areas as historic districts, may designate sites as archaeological sites, and may define, amend and delineate the boundaries of any landmark, protected landmark, historic district or archaeological site as provided in this article.

(b) To encourage public participation and the resultant preservation of historical, cultural and archeological resources, the city council shall be authorized to offer owners of properties considered for designation tax exemptions and other incentives that the city council may determine appropriate, at the time of the proposed designation.

(c) Prior to action by the city council, the HAHC and the commission shall review each application for designation and make a recommendation with respect to the application, but designation shall be made only by the city council.

Sec. 33-222. Application for designation of a landmark, archaeological site or protected landmark.

(a) Application for designation of a landmark or an archaeological site shall be initiated by either:

- (1) The owner of the property for which the application is made or the owner's authorized representative; or
- (2) The HAHC upon instructing the planning official to prepare an application for designation. Within ten working days following the action of the HAHC initiating an application, the planning official shall mail notice to the owner of the property or the owner's agent, as shown on the most recent city tax roll, that the HAHC has initiated an application.

(b) Application for designation of a protected landmark shall be initiated by the owner of the property proposed for designation. Application may be made in conjunction with an application for designation of a landmark or at any time after the city council has designated the property as a landmark.

(c) The application for designation of a landmark, protected landmark, historic district or archaeological site shall be filed with the department in the form prescribed by the planning official. The application shall include a description and photographs of the property or properties and shall address each of the applicable criteria for designation contained in section 33-224 of this Code. The application for designation of a protected landmark shall include an instrument suitable for recording in the real property records, in a form approved by the city attorney, signed by the owner indicating that the 90-day waiver provision of section 33-250 of this Code shall not apply to the protected landmark and that the property is subject to the demolition by neglect provisions of section 33-254 of this Code.

~~(c) Application for designation of a protected landmark shall be initiated by the owner of the property proposed for designation. Application may be made in conjunction with an application for designation of a landmark or at any time after the city council has designated the property as a landmark.~~

~~(d) The application for designation of a landmark, protected landmark, historic district or archaeological site shall be filed with the department in the form prescribed by the planning official. The application shall include a description and photographs of the property or properties and shall address each of the applicable criteria for designation contained in section 33-224 of this Code. The application for designation of an historic district shall also identify with respect to each building, structure, object or site within the proposed historic district whether it is proposed for designation as a contributing structure, a potentially contributing structure or a noncontributing structure. The application for designation of a protected landmark shall include an instrument suitable for recording in the real property records, in a form approved by the city attorney, signed by the owner indicating that the 90-day waiver provision of section 33-250 of this Code shall not apply to the protected landmark and that the property is subject to the demolition by neglect provisions of section 33-254 of this Code.~~

Sec. 33-222.1 Application for designation of an historic district.

(ba) Application for designation of an historic district shall be initiated by either:

- (1) The one or more owners of at least 51 percent of the tracts property in the proposed district, subject to the requirement of subsection (c) of this section that at least 67 percent of the owners of tracts in the proposed district who return cards pursuant to subsection (c) to the department indicate support of the application, which tracts shall constitute 51 percent of the land area within the proposed district exclusive of street, alley and fee simple pipeline or utility rights-of-way and publicly owned land, as

~~determined by the planning official. In case of a dispute over whether the percentage requirements have been satisfied, it shall be the burden of the challenger to establish by a preponderance of the evidence through the real property records of the county or counties in which the proposed historic district is located or other public records that the applicants have not satisfied the percentage requirements; or~~

- (2) The HAHC upon instructing the planning official to prepare an application for designation.

(b) The application for designation of a historic district shall be filed with the department in the form prescribed by the planning official. The application shall include the proposed boundaries of the historic district, a description and photographs of the properties in the proposed district and shall address each of the applicable criteria for designation contained in section 33-224 of this Code. The application shall also identify with respect to each building, structure, object or site within the proposed historic district whether it is proposed for designation as a contributing structure, a potentially contributing structure or a noncontributing structure.

(c) The department shall review an application submitted by one or more property owners for completeness. Upon determining that the application is complete, the director shall schedule and conduct at least one public meeting on the proposed historic district. The director will establish rules for the conduct of public meetings and the process for soliciting the evidence of support required by this subsection, which shall provide that the deadline for returning support cards shall be 30 days after the date of the postmark on the letter mailing the card. The director will endeavor to conduct the meeting within or near the proposed historic district, subject to the availability of appropriate space for public assembly. The director will present information on the proposed application and the process for approval at each public meeting. Following the close of the public meeting, or the last public meeting if more than one, the director shall mail to the owner of each property within the proposed district, as shown on the most recently approved ad valorem tax roll of the city, a letter giving notice of the date and time of the public hearing to be held by the HAHC pursuant to section 33-225 of this Code, which letter shall include a card to be returned to the department indicating whether the property owner does or does not support the application. The returned card must demonstrate support by 67 percent of the owners of tracts in the proposed district (or as the boundaries of the proposed district may be modified) who timely return cards to the department or the application shall be denied and no further action taken on it.

Sec. 33-223. Property pending designation.

(a) Upon initiation of an application for designation of a landmark, archaeological site or historic district that satisfies the minimum age criteria of section 33-224(b) of this Code, the building, structure, object or site proposed for designation as a landmark or archaeological site and any building, structure, object or site located in an

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area proposed for designation as an historic district shall be subject to the requirements of division 4 of this article as though the building, structure, object, site or area had been designated by the city council. The protected status provided by the foregoing shall not apply to any building, structure or object that is less than 50 years old or that is located in a proposed historic district in which the majority of buildings, structures and objects are less than 50 years old. If the HAHC denies an application for certificate of non-designation for any property pursuant to section 33-228 of this Code, the property shall also be subject to the provisions of this section.

(b) The protected status provided in subsection (a) above ends on the earliest of the following dates:

- (1) The day after an action of the city council rejecting an application for designation;
- (2) In the case of an application initiated by the HAHC, the day after an action of the HAHC recommending against the designation;
- (3) In the case of an application for designation of a landmark or archaeological site initiated by the property owner, the day after the withdrawal of the application by the property owner;
- (4) In the case of an application for designation of an historic district initiated by one or more property owners, the day after the director determines that the required numbers of owners have not returned cards in support of the designation of the district and the boundaries of the proposed district cannot be modified to meet the required support; or
- (45) In the case of the denial of a certificate of non-designation by the HAHC, the 181st day after the decision of the HAHC.

For purposes of this article, an application for designation is initiated immediately upon the occurrence of either the filing of an application for designation ~~by the requisite owners pursuant to section 33-222~~ or section 33-222.1 of this Code or, in the case of an application initiated by the HAHC, the date a majority of the HAHC votes to authorize the preparation of an application.

Sec. 33-224. Criteria for designations.

(a) The HAHC and the commission, in making recommendations with respect to designation, and the city council, in making a designation, shall consider one or more of the following criteria, as appropriate for the type of designation:

- (1) Whether the building, structure, object, site or area possesses character, interest or value as a visible reminder of the development, heritage, and cultural and ethnic diversity of the city, state, or nation;

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- (2) Whether the building, structure, object, site or area is the location of a significant local, state or national event;
- (3) Whether the building, structure, object, site or area is identified with a person who, or group or event that, contributed significantly to the cultural or historical development of the city, state, or nation;
- (4) Whether the building or structure or the buildings or structures within the area exemplify a particular architectural style or building type important to the city;
- (5) Whether the building or structure or the buildings or structures within the area are the best remaining examples of an architectural style or building type in a neighborhood;
- (6) Whether the building, structure, object or site or the buildings, structures, objects or sites within the area are identified as the work of a person or group whose work has influenced the heritage of the city, state or nation;
- (7) Whether specific evidence exists that unique archaeological resources are present; and
- (8) Whether the building, structure, object or site has value as a significant element of community sentiment or public pride.

(b) Notwithstanding the foregoing, no building, structure, object or site less than 50 years old shall be designated as a landmark, protected landmark, or archaeological site, and no area in which the majority of buildings, structures or objects is less than 50 years old shall be designated as an historic district, unless it is found that the building, structure, object, site or area is of extraordinary importance to the city, state or nation for reasons not based on age.

Sec. 33-225. Procedures for designation of landmark, historic district and archaeological site.

(a) The HAHC shall review each application for designation of a landmark, historic district, and archaeological site and shall conduct a public hearing on each application. The planning official shall make a record of the public hearing. The HAHC shall consider the application and evidence presented at the public hearing. After due consideration, the HAHC shall determine whether to recommend the designation, provided, however, that if the HAHC does not act with respect to an application for designation within 60 days of the public hearing before the HAHC on the designation, the HAHC shall be deemed to have recommended against the designation. The recommendation of the HAHC, which shall include the basis for the recommendation, shall be in writing and shall be submitted to the commission. If the HAHC initiates the

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application, but recommends against designation upon consideration of the completed application, the application shall be withdrawn and no recommendation shall be submitted to the commission.

(b) The commission shall review each application for designation after receiving a recommendation from the HAHC and shall conduct a public hearing on the application. The planning official shall make a record of the public hearing. The commission shall consider the application, the recommendation of the HAHC and evidence presented at the public hearing. After the close of the public hearing, the commission shall determine whether to recommend the designation, provided, however, that if the commission does not act with respect to an application for designation within 60 days of the public hearing before the commission on the designation, the commission shall be deemed to have concurred in the recommendation of the HAHC. The recommendation of the commission, which shall include the basis for the recommendation, shall be in writing.

(c) The planning official shall submit the recommendation of the commission, which shall include the recommendation of the HAHC and the application, to the city council.

(d) The city council shall consider each application for designation after receiving a recommendation from the commission and shall decide whether to designate the property.

(e) The city secretary shall maintain a copy of a map identifying each landmark, historic district and archaeological site designated by the city council, and additional copies shall be maintained by the planning official and the building official. The planning official shall file for recordation in the real property records of the county or counties in which the designated property is located each action of the city council designating a landmark, historic district or archaeological site.

Sec. 33-226. Notice requirements.

(a) The planning official shall give notice of a public hearing before the HAHC on the designation of a landmark or archaeological site initiated by the HAHC not less than 30 days before the date of the public hearing to the owner of the property at the name and address as shown on the recently approved ad valorem tax roll of the city. If the notice address for the owner as shown on the most recently approved ad valorem tax roll of the city does not coincide with the street address of the property, then the planning official shall also send a notice addressed occupant to the street address for the proposed landmark or archaeological site. The planning director shall also publish notice of the public hearing in a newspaper of general circulation in the city not less than 30 days before the date of the public hearing.

(b) The planning director shall provide notice of a public hearing on the

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designation of a landmark or archaeological site by letter, first class mail, postage paid, by facsimile transmission or by electronic mail no later than the fifth day before the date of the public hearing to:

- (1) Any civic association registered with the planning official within whose service area the potential landmark or archaeological site is located; and
 - (2) If the owner of the landmark or archaeological site initiated the application for designation, the owner.
- (c) The planning official shall give notice of a public hearing before the HAHC on the designation of an historic district not less than 30 days before the date of the public hearing on designation as follows:

(1) ~~If the application for designation was initiated by the HAHC, N~~notice shall be given by mail (i) ~~if the owner joined in the application, to the owner or the owner's representative at the notice address shown on the application;~~ (ii) ~~if the owner did not join in the application, to the name and address shown on the most recently approved ad valorem tax roll of the city, and, if the notice address for the owner as shown on the most recently approved ad valorem tax roll of the city does not coincide with the street address of the property, then a notice shall also be sent addressed occupant to the street address for the property proposed to be included in the historic district; and (iii) to any civic associations registered with the planning official within whose service area all or part of the historic district is located;~~

(2) If the application for designation was initiated by one or more owners of property within the proposed district, notice shall be given as provided in section 33-222.1 of this Code;

(23) Notice shall be published in a newspaper of general circulation in the city; and

(34) Notice shall be posted by sign in at least four locations within the district selected by the planning official at locations reasonably calculated to be seen easily by residents of the district and where each sign will be visible from at least one public right-of-way. In addition, where, in the opinion of the planning official, because of the size, configuration, traffic patterns or other characteristics of the proposed historic district, additional signs would be beneficial in providing notice, the planning official shall cause an appropriate number of additional signs to be posted. The signs shall conform to specifications prescribed by the planning official.

(d) At each public hearing conducted under this division before the HAHC, the HAHC, upon making its recommendation to the commission regarding an application for

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landmark, protected landmark or historic district designation, shall also announce the date of the public hearing at which the commission will consider the application.

(e) Written notice that is given by mail shall be deemed given when it is deposited in the United States mail, properly addressed, postage paid. The affidavit of a person who has knowledge of the fact that notice was mailed constitutes prima facia evidence that notice has been given as required by this section.

(f) Additional notice need not be given if the public hearing is adjourned or continued to another date, provided that the date, time and place to which the public hearing is adjourned or continued are specified in the public hearing.

Sec. 33-227. Amendment; changes in boundary.

Amendment of any designation of any landmark, protected landmark, historic district or archaeological site and any change in the boundaries of any historic district or archaeological site shall require action by the city council and shall follow the procedures for application, notice, public hearing and recommendation by HAHC and the commission used for the original designation of the landmark, historic district or archaeological site. Nothing herein shall be construed to require the city council to follow all of the procedures used in the original designation if the amendment is solely for the purpose of correcting minor technical errors, including, but not limited to, errors in property descriptions, that are necessary to implement the intent of the city council with respect to the designation.

Sec. 33-228. Certificate of non-designation.

(a) The owner or owner(s) agent of any property may submit an application for a certificate of non-designation with respect to any building, structure, object, site, property or area that has not been designated as a landmark, protected landmark, contributing or potentially contributing structure in an historic district or an archaeological site. Applications shall be filed with the planning official and shall contain the following information:

- (1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;
- (2) The address and general description of the property that is the subject of the application;
- (3) A current photograph of the property that is the subject of the application; and
- (4) Information demonstrating whether the property is eligible for designation as a landmark or protected landmark or as a contributing or potentially contributing structure in an historic district or an archaeological site.

The application for a certificate of non-designation shall be accompanied by a nonrefundable fee of \$25.00.

(b) The HAHC shall consider an application for certificate of non-designation at a regular meeting within 35 days of the date a complete application for the certificate is filed with the planning official or at a later time mutually agreed upon in writing by the planning official and the applicant. The HAHC may continue its consideration of an application for a certificate of designation to its next regular meeting upon finding that specific information is needed by the HAHC to enable it to reach its decision or upon agreement with the applicant for a continuance. If the HAHC does not act upon an application for a certificate of non-designation within the later of 70 days from the date the application is filed with the planning official or 35 days after the date mutually agreed on by the applicant and planning official for review of the application by the HAHC, the application shall be deemed approved, unless the applicant consents in writing to an extension to a specified date.

(c) The HAHC shall not grant the certificate of non-designation if it finds any of the following:

- (1) The building, structure, object, site, property or area is the subject of an pending application for designation as a landmark, protected landmark or archaeological site;
- (2) The building, structure, object, site, property or area is within an area that is the subject of a pending application for designation of an historic district;
- (3) The building, structure, object, site, property or area is eligible for designation as a landmark, protected landmark or archaeological site;
- (4) The building, structure, object, site, property or area is located in an area that is eligible for designation as an historic district; or
- (5) The building, structure, object, site, property or area is located in an area that is eligible for designation as an historic district and meets the criteria for contributing or potentially contributing structure if the area were to be designated as an historic district.

Otherwise, the HAHC shall grant the certificate of non-designation.

(d) The certificate of non-designation shall expire six months after the date of its issuance and shall be evidence that the subject of the certificate of non-designation will not be subject to the provisions of this article for a period of six months from the date of issuance of the certificate of non-designation. The certificate of non-designation shall run with the land and may not be transferred to any other building, structure, object, site, property or area.

(e) If the HAHC finds that the subject of an application does not qualify for a certificate of non-designation, the HAHC shall deny the application and shall notify the applicant in writing of the denial. If the HAHC denies the certificate of non-designation, the property shall be subject to the provisions of section 33-223 of this Code for the time specified therein.

(f) Following notice and an opportunity for hearing, the HAHC may revoke a certificate of non-designation that is found to have been issued in error.

(g) If the city council designates as a landmark or archaeological site a building, structure, object or site that is the subject of an unexpired certificate of non-designation, the designation shall not be effective until the expiration of the certificate of non-designation. If the city council designates an historic district, the designation shall not be effective with respect to an individual building, structure, object or site located within the historic district that is the subject of an unexpired certificate of non-designation until the expiration of the certificate of non-designation with respect to the individual building, structure, object or site.

Sec. 33-229. Designation of protected landmark.

(a) The HAHC shall review each application for designation of a protected landmark that is included in an application for designation of a landmark at the same time and in the same manner as it reviews and considers the application for landmark. The HAHC shall not recommend a property to be designated as a protected landmark unless the property:

- (1) Meets at least three of the criteria for designation in section 33-224 of this Code;
- (2) Was constructed before 1905;
- (3) Is listed individually or as a contributing structure in an historic district on the National Register of Historic Places; or
- (4) Is recognized by the State of Texas as a Recorded State Historical Landmark.

(b) If the HAHC reviews an application for designation of a protected landmark initiated after the designation of the landmark, the HAHC shall review the basis for its initial recommendation for designation and may recommend designation of the landmark as a protected landmark if the landmark:

- (1) Met at least three of the criteria of section 33-224 of this Code at the time of its designation or, based upon additional information considered by the HAHC, the landmark then meets at least three of criteria of section 33-224

of this Code;

- (2) Was constructed before 1905;
- (3) Is listed individually or as a contributing structure in an historic district on the National Register of Historic Places; or
- (4) Is recognized by the State of Texas as a Recorded State Historical Landmark.

(c) The recommendation of the HAHC shall be submitted to the commission and the city council pursuant to section 33-225 of this Code.

(d) The city secretary shall maintain a copy of a map identifying each protected landmark designated by the city council, and additional copies shall be maintained by the planning official and the building official. The planning official shall file for recordation in the real property records of the county or counties in which the designated property is located notice of each action of the city council designating a protected landmark and the form submitted by the owner pursuant to subsection 33-222(dc) of this Code.

Secs. 33-230--33-235. Reserved.

DIVISION 4.

CERTIFICATES OF APPROPRIATENESS

Sec. 33-236. Prohibited activities; offense.

(a) No person shall alter, rehabilitate, restore or construct any exterior feature of a landmark or protected landmark without a certificate of appropriateness.

(b) No person shall alter, rehabilitate, restore or construct any exterior feature of any building, structure or object within an historic district without a certificate of appropriateness.

(c) No person shall excavate any archaeological site; alter, rehabilitate, restore or construct any exterior feature of any building, structure or object located on or in an archaeological site; or demolish any building, structure or object located on or in an archaeological site without a certificate of appropriateness.

(d) No person shall relocate any landmark or protected landmark without a certificate of appropriateness.

(e) No person shall relocate any building, structure or object within, into or out of an archaeological site without a certificate of appropriateness.

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(f) No person shall relocate any building, structure or object within or into an historic district or relocate a contributing structure out of an historic district without a certificate of appropriateness, provided that a certificate of appropriateness shall not be required to relocate a noncontributing structure to a location outside of the historic district in which it is located.

(g) No person shall demolish any landmark, protected landmark, or any building, structure or object within an historic district without a certificate of appropriateness.

(h) No person shall conduct any mandatory repair of a landmark, protected landmark, or of a building, structure or object within an historic district or archaeological site without a certificate of appropriateness.

(i) It shall be unlawful for any person to alter, rehabilitate, restore, construct, relocate or demolish any landmark, protected landmark, or any building, structure or object in an historic district or archaeological site, or excavate any archaeological site, without complying with the provisions of this article. It is a defense to prosecution under this section that the director of public works and engineering or a deputy director or an assistant director having supervisory responsibilities over the issuance of building permits has determined (1) that the work to be performed is necessary to correct conditions that are in violation of the life safety requirements for existing buildings as set forth in Chapter 34 and Appendix L of the Building Code; (2) that the work to be performed is the only means for achieving compliance with the life safety requirements; and (3) that, based upon the nature of the life safety violations and the risks associated with their continuation, the provisions of this article should be waived to the extent of the life safety requirements.

(j) Any application for amendment to a pending certificate of appropriateness application or building permit application or a certificate of appropriateness or building permit that has been issued under the provisions of this section that would affect any part of the work that is within the scope of this article, as set forth in section 33-202 of this Code, shall be considered as though it were an original application for the purposes of this division.

Sec. 33-237. Exemption.

A certificate of appropriateness is not required for ordinary maintenance and repair. The operation of this section shall constitute an affirmative defense to prosecution under section 33-236 of this Code.

Sec. 33-238. Application.

An application for a certificate of appropriateness may be filed before, at the same time as or after the filing of an application for a building permit, but the 90-day

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period provided for in section 33-250 of this Code shall not begin until a completed application for a certificate of appropriateness is filed with the planning official. An applicant for a building permit may request the building official to review and process the application for a building permit during the 90-day period provided for in section 33-250 of this Code, but no building permit shall be issued until the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to section 33-250 of this Code.

Application for a certificate of appropriateness shall be made by the owner of the property for which the application is requested or by the owner's agent. When necessary for the city to enforce the provisions of article IX of chapter 10 of this Code, the neighborhood protection official shall apply for any necessary certificate of appropriateness. Applications shall be filed with the planning official and shall contain the following information:

- (1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;
- (2) The address and general description of the property that is the subject of the application;
- (3) A statement of whether the intended action by the applicant is:
 - a. Demolition;
 - b. Relocation;
 - c. Alteration;
 - d. Restoration;
 - e. Rehabilitation;
 - f. New construction;
 - g. Excavation; or
 - h. Mandatory repair;
- (4) A current photograph of the subject of the application; and
- (5) Either:
 - a. A rendering of the exterior of the subject of the application as it will appear upon completion of the proposed activity; or

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- b. A description of the work intended to be done, the materials to be used and the changes to be made.

If any plans and specification are required to secure a building permit, a copy of the plans and specifications shall be submitted with the application for certificate of appropriateness. There shall be no fee for the filing of an application for a certificate of appropriateness.

- (6) In addition, a complete application for a certificate of appropriateness for new construction in an historic district must contain, and the department shall not accept any application that does not contain, at least one of the following:

- a. Evidence that the proposed site for the new construction is vacant;
or
- b. A copy of a certificate of appropriateness approving demolition or relocation of any buildings, structures, or objects located on the proposed property for the new construction; ~~or~~
- ~~c. A copy of a 90-day waiver certificate issued pursuant to section 33-250 of this Code allowing the demolition or relocation of any buildings, structures or objects located on the proposed site for the new construction.~~

Sec. 33-238.1. Notice requirements.

(a) The applicant for a certificate of appropriateness for demolition or relocation of a landmark, protected landmark, or any contributing or potentially contributing building, structure or object in an historic district shall give notice of a meeting of the HAHC to consider the application for a certificate of appropriateness not less than ten days before the date of the meeting by posting at least one sign on the property for which the certificate of appropriateness is requested. A sign shall face each public right-of-way bordering the site; provided, however, that if more than four signs would be required to be posted, the applicant may request the director to approve an alternative number and location of signs. The director shall approve an alternative to the number and location of signs required by this subsection in excess of four upon determining that the alternative will provide maximum visibility and obtain the objectives of this section without unduly burdening the applicant.

(b) Each sign shall be a minimum of four by eight feet in size and shall be posted no more than 15 feet from the public right-of-way. The lettering on the sign shall be legible from the public right-of-way. The applicant shall use reasonable efforts to maintain each required sign on the site until the close of the meeting at which the HAHC acts on the application.

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- (c) Each sign shall provide the following information:
 - (1) The application number and the type of certificate of appropriateness being requested;
 - (2) The date, time, and place of the meeting at which the commission will first consider the application;
 - (3) A telephone number of the applicant to call for additional information; and
 - (4) A department telephone number to call for additional information.

Sec. 33-239. Procedures.

An application for a certificate of appropriateness shall be considered by the HAHC if the complete application is submitted by the next scheduled submittal deadline as approved by the HAHC. The HAHC may continue its consideration of an application for a certificate of appropriateness to its next regular meeting upon finding that specific information is needed by the HAHC to enable it to reach its decision or upon agreement with the applicant for a continuance. If the HAHC does not act upon an application for a certificate of appropriateness within the next two meetings of the HAHC after the first meeting in which the application is considered for a total of three meetings in which the application is considered, the application shall be deemed approved, unless the applicant consents in writing to an extension to a specified date.

Sec. 33-240. Criteria for issuance of certificates of appropriateness--General.

Except as provided in subsection 33-241(b) and sections 33-248 and 33-249 of this Code, the HAHC shall review and approve, approve with conditions, or disapprove a certificate of appropriateness pursuant to the applicable specific criteria in this division or, if a conservation plan for an historic district has been approved pursuant to section 33-268 of this Code, the criteria in the conservation plan. ~~In considering and acting upon a certificate of appropriateness for any property located within the Old Sixth Ward Protected Historic District, the HAHC shall use the design guidelines to determine whether the application meets the applicable specific criteria of this division.~~ The applicant for a certificate of appropriateness shall have the burden of demonstrating that the application satisfies the criteria applicable to the issuance of the certificate of appropriateness. To approve or disapprove an application for a certificate of appropriateness, the HAHC shall consider and make findings with respect to the relationship between the proposed activity and the applicable criteria. The HAHC shall take into consideration the current needs of the applicant and shall be sensitive to the property owner's financial condition in determining whether to issue a certificate of appropriateness.

Sec. 33-241. Same--~~Exterior Alteration~~alteration, rehabilitation, restoration and construction~~addition~~.

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(a) The HAHC shall issue a certificate of appropriateness for the alteration, rehabilitation, restoration or ~~construction~~addition of an exterior feature of (i) any landmark, (ii) protected landmark, (iii) any building, structure or object in an historic district, or (iv) any building, structure or object that is part of an archaeological site, upon finding that the application satisfies the following criteria, as applicable:

- (1) The proposed activity must retain and preserve the historical character of the property;
- (2) The proposed activity must contribute to the continued availability of the property for a contemporary use;
- (3) The proposed activity must recognize the building, structure, object or site as a product of its own time and avoid alterations that seek to create an earlier or later appearance;
- (4) The proposed activity must preserve the distinguishing qualities or character of the building, structure, object or site and its environment;
- (5) The proposed activity must maintain or replicate distinctive stylistic exterior features or examples of skilled craftsmanship that characterize the building, structure, object or site;
- (6) New materials to be used for any exterior feature visible from a public right of way excluding alleys must be visually compatible with the materials being replaced in ~~composition~~form, design, texture and ~~scale~~other visual qualities;
- (7) The proposed replacement of ~~missing~~ exterior features, if any, should be based on accurate duplication of features, substantiated by available historical, physical or pictorial evidence, where that evidence is available, rather than on conjectural designs or the availability of different architectural elements from other structures;
- (8) Proposed additions or alterations must be done in a manner that, if removed in the future, would leave unimpaired the essential form and integrity of the building, structure, object or site;
- (9) The proposed design for any exterior alterations or ~~construction~~addition must not destroy significant historical, architectural or cultural material and must be compatible with the size, scale, material and character of the property and the area in which it is located;
- (10) The setback of any proposed ~~construction~~addition or alteration must be compatible with existing setbacks along the blockface and facing

blockface(s); and

- (11) The proposed activity will comply with any applicable deed restrictions.

(b) Notwithstanding the preceding subsection (a), the planning official is authorized to issue a certificate of appropriateness for the following types of alteration of a (i) landmark, (ii) protected landmark, (iii) building, structure or object in an historic district, or (iv) building, structure or object that is part of an archaeological site upon finding that the application satisfies the criteria of the subsection (a) of this section of the Code, as applicable:

- (1) Removal of an inappropriate window or door element that was not original to the structure and replacement with a window or door element that:
 - a. Is appropriate to the historic significance of the structure; and
 - b. Does not change the size, shape or location of any opening, including the trim, molding or other features associated with the opening, from which the window or door elements are to be removed;
- (2) Removal of synthetic exterior wall cladding, such as asbestos, aluminum or vinyl siding, that was not an original feature or characteristic of the structure and replacement with appropriate cladding; and
- (3) Installation of ~~missing~~ any details including porch elements or detailing that ~~has~~ have been partially lost or removed but whose existence has been substantiated by the remaining elements still in existence or historical documentation such as architectural plans or historic photographs.

If the director disapproves the application, or if the director does not approve the application within 15 business days of receipt of the complete application, the application shall be referred to the HAHC for consideration pursuant to subsection (a) of this section. The schedule for consideration of an application for a certificate of appropriateness provided by section 33-239 of this Code shall apply to an application considered under this subsection and the administrative process authorized herein shall not suspend any time required for consideration. The director may promulgate rules for the receipt and processing of applications under this subsection.

(c) In reviewing applications for certificates of appropriateness under this section, the HAHC or the director, respectively as appropriate, shall also consider any elements of the proposed activity that may be necessary to enable the property to comply with any other applicable city ordinances or state or federal law so as to facilitate compliance with this ordinance and other applicable laws.

Sec. 33-242. Same--New construction in historic district.

The HAHC shall issue a certificate of appropriateness for new construction in an historic district upon finding that the application satisfies the following criteria:

- (1) The new construction must be compatible with the setbacks of contributing and potentially contributing structures on ~~along~~ the blockface and facing blockface(s);
- (2) The exterior features of new construction must be compatible with the exterior features of of contributing and potentially contributing structures ~~along~~ the blockface ~~or~~ and facing blockface(s); and
- (3) The proportions of the new construction, including height, width, length and roofline, must be compatible with the proportions of contributing and potentially contributing structures and objects ~~along~~ the blockface ~~or~~ and facing blockface(s).

Nothing in the foregoing shall be construed to require or impose a single architectural style in any historic district.

Sec. 33-243. Same--Relocation of landmark, protected landmark, contributing structure or potentially contributing structure.

(a) The HAHC shall issue a certificate of appropriateness for the relocation of any landmark, protected landmark, contributing structure or potentially contributing structure upon finding that the application satisfies one or more of the following criteria:

- (1) The landmark, protected landmark, contributing structure or potentially contributing structure:
 - a. Has architectural or historical value independent of its physical location that will not be diminished with relocation;
 - b. Can be moved without significant damage to its physical integrity;
 - c. Will be relocated to an area that is compatible with the historical and architectural character of the landmark, protected landmark, contributing structure or potentially contributing structure; and
 - d. If located in an historic district, can be relocated without significantly diminishing the integrity of the historic district in which it is located.
- (2) The relocation is necessary to protect the landmark, protected landmark, contributing structure or potentially contributing structure from demolition

resulting from a public improvement project;

- (3) The applicant has established an unreasonable economic hardship pursuant to the criteria of section 33-247(a)(1) of this Code; or
- (4) The applicant has established unusual or compelling circumstances pursuant to section 33-247(a)(3) of this Code.

(b) Alternatively, the HAHC shall issue a certificate of appropriateness for relocation if relocation of the landmark, protected landmark, contributing structure or potentially contributing structure has been identified as an alternative to demolition pursuant to section 33-247(b)(2) of this Code.

Sec. 33-244. Same--Relocation of noncontributing structure.

The HAHC shall issue a certificate of appropriateness for the relocation of a noncontributing structure within or into an historic district upon finding that the application satisfies the criteria in section 33-242 of this Code as if it were new construction.

Sec. 33-245. Same--Relocation of a building, structure or object on archaeological site.

The HAHC shall issue a certificate of appropriateness for the relocation of a building, structure or object within, into or out of an archaeological site upon finding that the application satisfies the following criteria:

- (1) The relocation will not destabilize any archaeological resources within or on the archaeological site; and
- (2) The relocation will comply with the requirements of section 33-246 of this Code.

Sec. 33-246. Same--Excavation.

The HAHC shall issue a certificate of appropriateness for the excavation of an archaeological site upon finding that the application meets the following criteria:

- (1) The excavation must be conducted so as to protect and preserve archaeological resources affected by, or adjacent to, the excavation; and
- (2) The applicant must commit to make reasonable efforts to mitigate and stabilize archaeological resources if they are disturbed.

Sec. 33-247. Same--Demolition of landmark, protected landmark, contributing structure, potentially contributing structure or within archaeological site.

(a) The issuance of a certificate of appropriateness for the demolition of a landmark, a protected landmark, a contributing structure or a potentially contributing structure or for demolition of a building, structure or object on or in an archaeological site shall be subject to the establishment by the applicant of an unreasonable economic hardship or the establishment of an unusual and compelling circumstance.

(b) An application for a certificate of appropriateness for demolition shall contain the following information:

- (1) The amount paid for the property, the date of purchase, and the party from whom the property was purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;
- (2) The assessed value of the land and improvements thereon according to the two most recent assessments, or, if the property is exempt from local property taxes, a certified appraisal of the value of the property conducted by a certified real estate appraiser;
- (3) For a for-profit or nonprofit organization, financial information for the previous two years, which shall include, at a minimum, the annual gross income of the organization; itemized operating and maintenance expenses; real estate taxes or payments made in lieu of real property taxes, if any; annual debt service; and annual cash flow;
- (4) All appraisals obtained by the owner in connection with the acquisition, purchase, donation, or financing of the property, or during the ownership of the property;
- (5) All listings of the property for sale or rent, price asked and offers received, if any;
- (6) Any consideration by the owner of uses and adaptive reuses of the property;
- (7) Identification of reasonable reuses for the property within the context of the property and its location;
- (8) Rehabilitation cost estimates for the identified uses or reuses, including the basis of the cost estimates;
- (9) The current standard of building and maintenance costs for the type structure in the Houston and Texas areas;
- (11) A comparison of the cost of rehabilitation of the existing building with the

demolition of the existing building and the construction of a new building;

(12) The impact of the reuse of the existing building on the financial condition of the owner;

(13) Consideration, if any, given by the owner to relocation of the structure;

(14) Complete architectural plans and drawings of the intended future use of the property, including new construction, if applicable;

(15) Financial proof of the ability of the applicant to complete the intended future use of the property, including new construction, if applicable;

(16) Plans to salvage, recycle, or reuse building materials if a certificate of appropriateness is granted;

(17) A nonprofit organization shall provide the following additional information:

a. A comparison of the cost of performance of the mission or function of the nonprofit organization in the existing building and in a new building;

b. The impact of the reuse of the existing building on the organization's program, function or mission;

c. The additional cost, if any, attributable to the building of performing the nonprofit organization's function within the context of costs incurred by comparable organizations, particularly in the Houston area;

d. Grants received, applied for or available to maintain or approve the property; and

e. The nonprofit organization's budget for the current and immediately past fiscal years.

(4c) Determination of an unreasonable economic hardship shall be based upon the following criteria:

(1) That the property is incapable of earning a reasonable return, without regard to whether the return is the most profitable return, including without limitation, whether the costs of maintenance or improvement of the property exceed its fair market value;

(2)b. That the property cannot be adapted for any other use, whether by the current owner, by a purchaser or by a lessee, that would result in a

reasonable return; and

(3)g. That efforts to find a purchaser or lessee interested in acquiring the property and preserving it have failed; and

(4) That efforts to relocate the property have failed; or

(5) If the applicant is a nonprofit organization, determination of an unreasonable economic hardship shall instead be based upon whether the denial of a certificate of appropriateness financially prevents or seriously interferes with carrying out the mission, purpose, or function of the non-profit corporation.

~~(2) With respect to a nonprofit organization, the city council recognizes that the determination of unreasonable economic hardship may depend on factors that are not applicable to an individual or a for profit enterprise. To assist the HAHC in determining whether a nonprofit organization has met the criteria of item (1) above, the nonprofit organization may present and the HAHC may consider the following information:~~

~~a. The amount paid for the property, the date of purchase, and the party from whom the property was purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;~~

~~b. The assessed value of the land and improvements thereon according to the most recent assessment, or, if the property is exempt from local property taxes, a certified appraisal of the value of the property conducted by a qualified real estate appraiser;~~

~~c. Financial information for the previous two years, which shall include, at a minimum, the annual gross income of the nonprofit organization; itemized operating and maintenance expenses; real estate taxes or payments made in lieu of real property taxes, if any; annual debt service; and annual cash flow;~~

~~d. All appraisals obtained by the owner in connection with the acquisition, purchase, donation, or financing of the property, or during the ownership of the property;~~

~~e. All listings of the property for sale or rent, price asked and offers received, if any;~~

~~f. Any consideration by the owner of uses and adaptive reuses of the property;~~

~~g. Identification of reasonable reuses for the property within the context of the property and its location;~~

~~h. Rehabilitation cost estimates for the identified uses or reuses, including the basis of the cost estimates;~~

~~i. The current standard of building and maintenance costs for the performance of the mission or function of the nonprofit corporation, particularly in the Houston and Texas areas;~~

~~j. A comparison of the cost of performance of the mission or function of the nonprofit organization in the existing building and in a new building, and a comparison of the cost of rehabilitation of the existing building with the demolition of the existing building and the construction of a new building;~~

~~k. The impact of the reuse of the existing building on the financial condition of the nonprofit organization;~~

~~l. The impact of the reuse of the existing building on the organization's program, function or mission;~~

~~m. The additional cost, if any, attributable to the building of performing the nonprofit organization's function within the context of costs incurred by comparable organizations, particularly in the Houston area;~~

~~n. Grants received, applied for or available to maintain or approve the property;~~

~~o. The nonprofit organization's budget for the current and immediately past fiscal years; and~~

~~p. Consideration, if any, given by the nonprofit organization to relocation.~~

(3d) Determination of the existence of an unusual or compelling circumstance shall be based upon the following criteria:

(1)a. That current information does not support the historic or archaeological significance of the building, structure or object or its importance to the integrity of an historic district, if applicable;

(2)b. Whether there are definite plans for reuse of the property if the proposed demolition is carried out and what effect such plans have on the architectural, cultural, historical or archaeological character of the surrounding area; and

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- (3)e- Whether reasonable measures can be taken to save the building, structure or object from further deterioration, collapse, arson, vandalism or neglect.

If the HAHC determines that the applicant has demonstrated an unreasonable hardship or the existence of an unusual or compelling circumstance by a preponderance of credible evidence, the HAHC shall issue a certificate of appropriateness for demolition.

(be) If the HAHC does not issue a certificate of appropriateness for demolition pursuant to subsection (a), the planning official and the applicant shall explore alternatives to demolition. It shall be the duty of an applicant for a certificate of appropriateness for demolition to participate in good faith in a diligent effort to identify alternatives to demolition. The HAHC, the planning official and the applicant may consult with recognized historic preservation organizations and other civic groups, public agencies and interested citizens to determine the feasibility of:

- (1) Public or other acquisition of the property, structure, building or object;
- (2) Relocating one or more of the structures or features of the property if to do so would preserve its historic or architectural value; or
- (3) Any other reasonable means of preserving the property, structure, building or object's historic or architectural value.

Sec. 33-248. Same--Demolition of noncontributing structure.

The planning official shall issue a certificate of appropriateness for demolition of a noncontributing structure upon determining that the building, structure or object for which the certificate of appropriateness is requested was identified as a noncontributing structure upon the designation of the historic district in which it is located.

Sec. 33-249. Same--Mandatory repair.

(a) The planning official shall issue a certificate of appropriateness for mandatory repair of a landmark, protected landmark, or of a building, structure or object within an historic district or archaeological site upon application and review of the order or citation requiring the mandatory repair if the planning official finds that the proposed mandatory repair is necessary to comply with the order or citation and will not result in a change in the architectural, historical, archaeological or cultural character of the landmark, protected landmark, or of the building, structure or object in the historic district or archaeological site that existed prior to the issuance of the order or citation. The planning official shall consider the criteria in section 33-241 in reviewing the application and making the findings required by this section.

(b) If the planning official does not issue a certificate of appropriateness for

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mandatory repair within three working days following receipt of the application or a later date mutually agreeable to the applicant and the planning official, or if the planning official denies the application, the application shall be submitted to the HAHC for consideration as if it were an application for a certificate of appropriateness for alteration, rehabilitation, restoration or construction pursuant to section 33-241 of this Code.

Sec. 33-250. Ninety-day waiver certificate.

(a) Except as provided in subsections (c) ~~and (d)~~ of this section, if for any reason a certificate of appropriateness has not been issued on or before the ninetieth day following the scheduled submittal deadline at which a complete application for a certificate of appropriateness was received by the planning official, then the applicant, upon request to the planning official, shall be entitled to the immediate issuance of a 90-day waiver certificate, which shall for all purposes be the equivalent of a certificate of appropriateness.

(b) Before the expiration of the 90 days, the applicant shall consult with department staff to explore alternatives to the actions proposed by the applicant to mitigate the reasons for which the certificate was denied. Notwithstanding the foregoing, any property for which a 90-day waiver certificate is granted pursuant to the provisions of this section shall not be eligible for any tax exemptions or other financial benefit authorized by the city council for the property based on its designation pursuant to this article.

~~(c) The planning official shall not issue a 90-day waiver certificate for any protected landmark or for any property located within the Old Sixth Ward Protected Historic District.~~

~~(d) The planning official shall not issue a 90-day waiver certificate for a contributing or potentially contributing structure within an historic district or for new construction in an historic district.~~

~~This provision applies to a complete application for a certificate of appropriateness for new construction in an historic district that is filed within 90 days following the issuance of a certificate of appropriateness or a 90-day waiver certificate for demolition or relocation of any buildings, structures, or objects on the site of the proposed new construction. If a complete application for a certificate of appropriateness for new construction in an historic district is disapproved by the HAHC, the number of days that passed between the issuance of the certificate of appropriateness or a 90-day waiver certificate for demolition or relocation and the next scheduled submittal deadline shall be subtracted from the 90 days the applicant must wait to obtain a 90-day waiver certificate pursuant to subsection (a) of this section.~~

Sec. 33-251. Emergency action; securing dangerous buildings.

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Nothing in this division shall limit the ability of the city to demolish, to order the demolition of, or to order any other action with respect to, any building, structure or object that the building official determines to be an imminent danger to the health, life or safety of any person. No certificate of appropriateness shall be required for a demolition or other action ordered by the building official pursuant to section 10-431 of this Code or for the securing of a building pursuant to section 10-377 of this Code.

Sec. 33-252. Conditions.

In granting any certificate of appropriateness, if the HAHC has reason to believe that the activity for which the certificate of appropriateness is required may result in the disturbance of any archaeological or paleontological resource, the HAHC may require, as a condition of the certificate of appropriateness, that the applicant submit a construction plan demonstrating actions that the applicant will undertake to mitigate the disturbance and loss of archaeological or paleontological resources.

Sec. 33-253. Appeal.

(a) An applicant aggrieved by a decision of the HAHC with respect to any certificate of appropriateness may appeal to the commission by filing a written notice of appeal, stating the grounds for the appeal, with the planning official within ten days following the date the HAHC renders its decision.

(b) The commission shall consider the appeal at its first regularly scheduled meeting for which required notice can be given. The commission shall consider the application, the findings of the HAHC and any evidence presented at the meeting at which the appeal is considered. The commission shall reverse or affirm the decision of the HAHC based upon the criteria applicable to the certificate of appropriateness. The decision of the commission shall be final. If the commission does not make a decision on the appeal within 30 days following the commission's hearing on the appeal, the decision of the HAHC with respect to the application for the certificate of appropriateness shall be deemed affirmed.

(c) The planning official shall provide the applicant with notice of the time and place of the meeting at which the appeal will be considered by mail no less than ten days before the date of the meeting.

Sec. 33-254. Demolition by neglect.

The owner of a contributing structure or potentially contributing structure located within the ~~Old Sixth Ward Protected Historic District~~ historic district or of a protected landmark shall not permit the contributing structure or potentially contributing structure or protected landmark to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature. The city should establish rules and procedures by which neighboring landowners and residents could initiate processes to remove landmarks in a serious state of disrepair from protected status.

Sec. 33-255. Validity.

A certificate of appropriateness shall be valid for one year from its effective date.

Sec. 33-256. Amendment.

A certificate of appropriateness may be amended, modified or extended only in accordance with the procedures and criteria established for its original approval.

Secs. 33-256--33-265. Reserved.

DIVISION 5.

CONSERVATION PLANS

Sec. 33-266. Plan optional.

The applicant for the designation of an historic district may prepare and submit a proposed conservation plan as part of the application.

Sec. 33-267. Requirements.

The proposed historic district conservation plan shall contain:

- (1) A map and description of the proposed historic district, including boundaries; photographs of buildings in the district; an inventory of the age, setting, character and architectural, cultural or historical significance of structures in the district; and objectives to be achieved in the historic district;
- (2) A statement of the architectural, cultural or historical significance of the proposed historic district and a description of structures and features to be preserved; and
- (3) A set of specific standards for reviewing applications for certificates of appropriateness for demolition, construction, alteration, rehabilitation, restoration and relocation that will preserve the integrity of the historic district.

Sec. 33-268. Approval; effect of approval; amendment.

(a) The proposed conservation plan shall be considered as part of the application for the designation of the proposed district and shall require the approval of the city council.

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(b) After approval, the HAHC and the commission shall use the conservation plan criteria for granting or denying applications for certificates of appropriateness for applicable activities within the boundaries of the historic district.

(c) A conservation plan may be amended from time to time in the same manner and following the same procedures used in the original approval of the conservation plan and designation of the district. No amendment shall be effective unless it is approved by the city council.

Sec. 33-269. Staff assistance.

When the city is the applicant for the designation of an historic district, the department shall prepare any proposed conservation plan.

Secs. 33-270--33-274~~300~~. Reserved.

~~DIVISION 6.~~

~~OLD SIXTH WARD PROTECTED HISTORIC DISTRICT~~

~~Sec. 33-275. Designation of old sixth ward protected historic district.~~

~~In recognition of the unique historical significance of the Old Sixth Ward area and in furtherance of the project plan and reinvestment zone financing plan of the Old Sixth Ward tax increment reinvestment zone (Reinvestment Zone Number Thirteen, City of Houston, Texas), there is hereby designated an area to be known as the Old Sixth Ward Protected Historic District. The purpose of the designation is to provide additional protection against the irretrievable loss or alteration of the historic structures with the OSWPHD and new construction that is not compatible with the historic structures in the district. The area included in the OSWPHD and the contributing, potentially contributing, and noncontributing structures in the OSWPHD are shown in Appendix G and Appendix H, respectively, to this chapter. The provisions of section 33-250(a) of this Code shall not apply to a certificate of appropriateness for any structure or property within the OSWPHD.~~

~~Sec. 33-276. Approval of design guidelines.~~

~~The city council hereby approves design guidelines to be applicable in the Old Sixth Ward Protected Historic District. A copy of the design guidelines is to be maintained in the office of the city secretary and on the website of the department. The HAHC shall refer to the design guidelines in determining whether an application for certificate of appropriateness satisfies the applicable criteria of division 4 of this article and in making the findings required by section 33-240 of this Code.~~

~~Sec. 33-277. Amendment of design guidelines.~~

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~~The HAHC shall conduct a public hearing on amendments to the design guidelines if changes are recommended by the HAHC in any annual report. At the public hearing, interested parties may comment in person or in writing on any recommended amendments to the design guidelines. Following the public hearing, the HAHC may amend the design guidelines.~~

~~Secs. 33-278--33-300. Reserved.~~

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